

**APPLICATION OF NANCY R. PRICE
FOR ASSOCIATE CIRCUIT JUDGE DIVISION 25
31st CIRCUIT JUDICIAL COMMISSION
GREENE COUNTY, MISSOURI (as adopted June 8, 2009)**

RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT IS NOMINATED.

NOTE – Please submit one (1) paper copy, with attachments, to each of the five (5) Commission members by mail.

1. Present principal occupation and title: **Attorney, Law Office of Nancy Graven Price, P.C. (solo practitioner)**

2. What is your age?

57

3. (a) How many years have you been a citizen of the United States?

57

(b) How long have you been a Greene County resident?

14 years (prior to leaving for law school) plus 22 years (after returning home from law school). Total Greene County residency is 36 years.

(c) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?

22 years

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

October 1, 1993 – My license is, and has always been, in good standing

5. List any other states, courts, or agencies in which you are licensed as an attorney.

- **United States District Court for the Western District of Missouri: 1993 to the present**
- **United States Court of Appeals for the Eighth Circuit: 1993 to the present**

6. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

**Southwest Missouri State University (NKA Missouri State University)
901 South National
Springfield, Missouri 65807
Attended 1977 to 1986 (part-time); 1987-1990 (full-time)
Bachelor of Science: Political Science - International Affairs**

- (b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

In 1986, at SMSU, I was fortunate to be able to benefit from the teachings and support of Dr. Alice Bartee. Dr. Bartee was a strong role model and mentor to me and was instrumental in my ultimate decision to attend law school. Due to my age (28 in 1986), in relation to the other students, I was concerned I would be too old to start law school. Dr. Bartee's advice and encouragement allowed me to pursue my dream and go to law school. My cumulative GPA at graduation from SMSU was 3.34. But from the time I decided to pursue the goal of going to law school around 1986, until my graduation in 1990, I was consistently on the Dean's List and for that time had a GPA of 3.62. I participated very little in extracurricular undergraduate activities because I worked throughout college and carried a full class schedule. However, I was a member of the French Honor Society during my last two years at SMSU and also routinely participated in activities with the Political Science Department.

- (c) Attach a certified copy of college, university and law school transcripts here, or have the institutions send transcripts direct to the contact person.

See attached.

7. (a) State the name and address of all law schools attended together with the dates and degrees received.

**University of Kansas School of Law
1535 W. 15th Street
Lawrence, Kansas 66045
Attended 1990-1993
Juris Doctorate**

- (b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

During my third year at KU School of Law, I was President of the Women in Law Club. During my presidency, I successfully advocated that males be accepted as members of the Women in Law Club.

8. State, in chronological order (starting with the earliest employment) (a) significant non-law-related employment prior to law school and (b) all employment from the beginning of law school to the present. To the extent reasonably available to you, include the name and address of each employer and the dates of employment, and, for legal employment,

describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

Work history prior to law school: Due to personal financial circumstances, it was necessary for me to work at a trade where I would be able to quickly earn a livable income. To that end, I obtained my Cosmetology license and worked as a hairdresser in the Springfield community from 1977 until after I graduated from law school in 1993. I won numerous awards at Missouri state competitions, and had a large clientele that included many successful Springfield business and professional leaders. As much as I enjoyed the personal interaction of working with my clients, in 1986 I decided to attend SMSU full-time to try to achieve my life-long goal to be an attorney. I did not have family financial support to attend college, and so I needed to continue working full-time, while also attending college full-time. I would literally cut hair for several hours, drive over to SMSU for classes and then back to the salon to finish my work day. Many clients will remember me studying while they were having their hair processed. I worked full-time as a self-employed hairdresser my entire undergraduate career.

Work history - law school to the present: During the entire three years of law school, I continued to travel to Springfield to work as a hairdresser every other weekend to help fund law school. I simply had no other financial resources. I would leave law school on a Friday night; work all day Saturday and Sunday in Springfield and then return to Lawrence, Kansas on Sunday night to start the school week the next morning.

In August of 1991, just before my second year of law school I began clerking for Ferree, Bunn & Byrom, an insurance defense law firm in Overland Park, Kansas (NKA Ferree, Bunn, O'Grady & Rundberg). I thoroughly enjoyed working at this law firm, even though it was a serious struggle to leave class at Lawrence and drive into Overland Park for work nearly every day. I continued to work for Ferree, Bunn & Byrom until November of my third year in 1992. Ferree, Bunn, O'Grady & Rundberg, 9300 Metcalf Ave, Overland Park, KS 66212

I then had the opportunity to clerk for Brock Snyder in Topeka, Kansas. Mr. Snyder was a solo plaintiff's practitioner who taught me a great deal. Mr. Snyder was a firm believer in advocating for "the little guy." I continued to work as a law clerk for Mr. Snyder after graduation until November of 1993. Brock R. Snyder Law Office, 1401 SW Topeka Blvd, Topeka, KS 66612

I became an Assistant Federal Public Defender at the Federal Public Defender's Office in Springfield, Missouri in November of 1993. I am the only attorney hired in this position directly out of law school in the history of the Western District of Missouri (and possibly in the entire nation). From the moment I started at the Federal Defender's Office, I was immediately immersed in new and challenging areas of the law. On my first day of work, I was assigned multiple civil mental health commitment cases at the Federal Medical Center. Within less than two months of being hired, I second chaired an attempted murder trial and gave the closing argument. (Although we did not win that case, we did keep the jury out for several hours).

I worked at the Federal Defender's Office for 13 years, from November of 1993 until August of 2006. During that time, I handled all manner of federal cases. I represented my clients starting in the district court and through the appellate process, including filing petitions for writ of certiorari to the United States Supreme Court. I represented defendants charged with many different types of white collar crimes, including Medicaid fraud, bank fraud and embezzlement. I represented defendants charged with environmental crimes, gun crimes, drug crimes and many other types of federal cases. During my time at the Federal Defender's Office, I handled literally dozens of federal jury trials and with a few rare exceptions, was the sole chair for all of my jury trials.

The Federal Defender's Office here in Springfield represents inmates at the Medical Center who file federal habeas corpus lawsuits challenging the conditions of their confinement. The Federal Defender's Office also represents inmates who the government seeks to commit for mental health treatment. These habeas and mental health commitment cases are civil cases and accounted for roughly 25% of my caseload while at the Federal Defender's Office. Just as with the criminal cases, I handled those civil cases from the appointment through the appeal if required.

For about one-year in 1994, in the evenings, I taught the LSAT preparatory course offered by Kaplan in Springfield, Missouri.

In August of 2006, I left the Federal Defender's Office and started in private practice as a criminal defense solo-practitioner. As a solo-practitioner for the last nine years, I have learned the ins and outs of running a business, including, but not limited to, handling my Trust and operating accounts, payroll, staff, advertising, bill paying, invoicing clients, etc. I have continued to have an active litigation practice and handle approximately 3-4 jury trials a year. At one point, I had two felony jury trials, one in Webster County and one in Greene County, within a two-week period and obtained not guilty verdicts on both cases.

In 2013, I decided to expand my practice into the civil arena and accepted two plaintiff clients, one a medical malpractice case and the other an invasion of privacy tort. Both cases are currently active and in the discovery process.

9. If you were a student at any school from which you were suspended, placed on probation, or expelled by school authorities, for any reason, describe the circumstances.

Not applicable

10. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. **It is your responsibility to redact any information in your description that might be confidential; i.e. juvenile matters, etc.** *(You either may take as much space as you need here or attach your response on separate sheets).* Include in your response:

My experience as an attorney has involved extensive work in the court room, either in jury trials, bench trials, motion hearings, or civil habeas and mental health cases. To be prepared for court, I have extensive experience in preparing jury instructions, voir dire

and motions in limine. Of course this also includes preparing for and conducting countless depositions, case investigations and witness examinations. For each jury trial, I participated in jury instruction conferences with the court and prosecutor. I have appeared in state and federal courts across Missouri, and gained a well-rounded knowledge of many different judges' procedures and practices, and would be able to utilize that knowledge and experience. Although my 22 years of experience as an attorney may not be as diverse as some, this is more than made up for by the full extent of my litigation experience. At all times, I have recognized the importance of being prepared and professional in the courtroom. At the end of a jury trial I had a few years back in Christian County, the prosecuting attorney told me that he had never before been against a better prepared and more professional attorney. At the conclusion of a recent trial in Lawrence County, Judge Blankenship told me he was very impressed with how prepared and professional I was during the trial. In fact, Judge Blankenship repeated that sentiment to me the next time he saw me over two months later. I believe that part of my professionalism and preparedness comes from my working for the Federal Defender's Office straight from law school. I never wanted to appear in court anything less than over-prepared. It is the way I practice law and would be the way I work as a judge. Extensive litigation experience has also enabled me to be able to command the courtroom. When I am in court and speak, others listen. This is crucial to being an effective judge.

I have extensive experience in the appellate courts and have handled, without assistance from other counsel, no less than 60 appeals. This means that I have vast experience drafting legal briefs, forming arguments, researching issues, responding to legal arguments and conducting oral argument. In this I was aided during law school by taking an advanced appellate writing class taught by Judge Deanell Tacha, then a judge with the Tenth Circuit Court of Appeals (currently Dean of the Pepperdine School of law).

My extensive trial and appellate experience has instilled in me the crucial knowledge and practice of making a complete and accurate record in the courtroom. Absent a good record at trial, one cannot prevail on appeal. I believe this experience sets me apart from other applicants who have judicial experience on the municipal bench, but whose cases are not heard on the record and who have never had to be cognizant that all of their rulings and statements from the bench may be reviewed by a higher court.

(a) **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court and, if published, the citation; identify the client(s) you represented and opposing counsel; give a one-paragraph description of the case and your role.

- ***United States v. Love*, 329 F.3d 981 (8th Cir. 2003).** Appellant, district court was reversed and case remanded for new trial – published opinion

Opposing counsel: David C. Jones on the brief, Richard Monroe at oral argument (Mike Jones at trial)

During cross-examination in the federal jury trial of my client, Deon Love, the district court limited my ability to cross-examine a key government witness regarding that witness's mental health. At trial, the district court rejected my argument that the cross-examination should be allowed under the Sixth Amendment right to confront adverse witnesses. After the jury found Mr. Love guilty, and the case proceeded on appeal, the Eighth Circuit found the district court committed reversible error when it limited my cross-examination of the government's witness. The Eighth Circuit found that although a court retains "wide latitude" insofar as the Confrontation Clause is concerned, the district court abused its discretion and a Confrontation Clause violation was shown. Finding that the district court's error may have contributed to the jury's finding of guilt, Mr. Love's guilty verdict was reversed and the case was remanded for a new trial. This was a significant case in the Eighth Circuit because it provided clear guidance for application of the Confrontation Clause to mental health issues of a witness. This case has been cited 104 times since its publication.

- *United States v. Woods*, 159 F.3d 1132 (8th Cir. 2001). Appellee, district court was affirmed – published opinion. The published opinion lists Raymond Conrad, Jr., on the brief for Appellee. This is incorrect. Mr. Conrad was the Federal Public Defender and his printed name appeared on the cover and signature pages of all filed briefs, but the signature at the bottom of the brief was mine and I wrote the brief in its entirety (under Nancy Graven) and argued the case.

Opposing counsel: David C. Jones on the brief, Richard Monroe at oral argument

This case arose during the time when application of the federal sentencing guidelines was mandatory and district courts were required to impose sentences as determined under the guidelines. During sentencing, I applied for a departure from the guidelines, arguing that my client's offense conduct was "outside the heartland" of cases involving the charged offense and that Ms. Woods' charitable good works were not adequately taken into consideration by a pure application of the guidelines. The district court granted this motion and imposed a sentence of probation for my client. The government appealed this departure. On appeal, the Eighth Circuit upheld the departure and the district court's application of the law. Agreeing with my analysis, the Eighth Circuit wrote an expansive framework for the correct application of the law when departures under the guidelines were to be considered. This case has been cited 319 times since its publication.

- *United States v. Hutton*, 252 F.3d 1013 (8th Cir. 2001). Appellant, district court was reversed and case remanded – published opinion (under Nancy Graven)

Opposing counsel: Douglas C. Bunch

The district court accepted the government's arguments at sentencing and applied a 3-level enhancement to the federal sentencing guidelines (which resulted in a significantly higher sentencing range). The district court denied my objection to the enhancement and the case proceeded on appeal. The Eighth Circuit reversed the district court's ruling because it agreed with my argument presented to the district court and on appeal that an inoperable replica of a revolver (a toy) that was not brandished, displayed or exhibited in any manner could not be used to enhance a sentence.

- *United States v. McMullen*, 86 F.3d 135 (8th Cir. 1996). Appellant, district court was reversed and case remanded – published opinion (under Nancy Graven)

Opposing counsel: Cynthia J. Hyde

Dennis McMullen had prior counsel and entered a guilty plea. When the presentence investigation report was complete, his sentencing guideline range was considerably higher than anticipated. Prior counsel attempted to withdraw McMullen's guilty plea to no avail. At sentencing, Mr. McMullen was sentenced to 262 months in prison. After sentencing, I was appointed to represent Mr. McMullen on direct appeal. On this direct appeal, I argued that the district court abused its discretion when it refused to allow Mr. McMullen to withdraw his guilty plea. Although whether to allow a defendant to withdraw a guilty plea "is left to the sound discretion of the trial court," the Eighth Circuit found that because we had presented a fair and just reason for withdrawal of Mr. McMullen's guilty plea (prior counsel's defective performance), then if such defective performance impacted Mr. McMullen's decision to plead guilty, he should be allowed to withdraw his guilty plea. This case provides a clear outline of federal law governing withdrawal of a guilty plea prior to sentencing and has been cited 167 times since its publication. After remand, Mr. McMullen entered a different plea agreement and ultimately received a significantly lower sentence.

- *Coy R. Phelps v. United States Bureau of Prisons*, 62 F.3d 1020 (8th Cir. 1995). Appellant, district court affirmed in part, reversed in part and case remanded with directions – published opinion (under Nancy Graven)

Opposing counsel: Aleen Castellani (Asst. U.S. Attorney in Kansas City, MO)

This procedurally complex case arose after Coy Phelps, an inmate at the U.S. Medical Center for Federal Prisoners, filed civil rights claims and habeas cases challenging his indefinite commitment at the Medical Center, alleging the Medical

Center was not a suitable facility for his commitment, and claiming he was forced to listen to religious programs in contravention of his religious beliefs. The district court consolidated his cases and dismissed them all for failure to state a meritorious claim. On appeal, the Eighth Circuit reversed the dismissal in part and ordered the case remanded for further proceedings to consider the merits of Mr. Phelps' claim that he was forced to listen to religious programming against his religious beliefs.

- *United States v. Marsanico*, 61 F. 3d 666 (8th Cir. 1995). Appellant, district court was reversed and case remanded – published opinion (under Nancy Graven)

Opposing counsel: Douglas C. Bunch

In this case, the district court accepted the government's and the probation office's interpretation of the federal sentencing guidelines on a fairly complex application issue. In chambers prior to sentencing, this issue was debated at length. However, during the actual hearing, I argued my ultimate request, but did not provide the law (as argued in chambers). Even reviewing the issue for "plain error," the Eighth Circuit reversed the district court's application of the guidelines and remanded the case for resentencing, agreeing with my interpretation of the guidelines. This was one of the first cases in the nation to interpret this section of the guidelines (U.S.S.G. § 5G1.3(c)) and provided the entire nation a clear framework to follow to interpret this section of the guidelines. This case was also meaningful to me as it was so early in my legal career. I represented Mr. Marsanico at his sentencing less than a year from starting work as a Federal Defender and argued the case to the Eighth Circuit within a year and a half of being hired in that position.

(b) **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court; identify who you represented and opposing counsel; state whether the case was disposed of following a jury trial, bench trial or at what other stage; give a one-paragraph description of the case and your role.

- *United States v. Calvin Porter*, U.S. Dist. Ct., W.D. Mo., 1996 to 1998 - Client acquitted after a jury trial

Opposing Counsel: Gregg R. Coonrod

Calvin Porter, an African-American man from California, was arrested at the bus station in Springfield, Missouri with two kilograms of cocaine in his suitcase. According to the DEA agent, Mr. Porter confessed to transporting the drugs. We filed a motion to suppress, and after a hearing before the Honorable Russell G. Clark, that motion was sustained. The government appealed Judge Clark's ruling to the Eighth Circuit, where it was overturned. On remand, we filed a different motion to suppress, and, after a hearing, that motion was also sustained by Judge Clark.

The government next appealed that order and the Eighth Circuit again reversed Judge Clark's ruling. We next proceeded to jury trial. After a four-day jury trial, Mr. Porter was acquitted of all charges. This acquittal was achieved even though the drugs were found in Mr. Porter's suitcase and even though the DEA agent testified that Mr. Porter had confessed to the crime. Although this case is a closed record, in light of the existing appellate record, disclosure here reveals only the additional fact of Mr. Porter's acquittal.

- *United States v. Dane Wheeler*, 95-05017, U.S. Dist. Ct., W.D. Mo., – Motion to Suppress, *Franks* violation, granted

Opposing counsel: Gregg Coonrod

Mr. Wheeler was charged with drug crimes that, if convicted, would subject him to mandatory life imprisonment. The government informed me that they would not offer a plea to anything less than mandatory life. The physical evidence against Mr. Wheeler was derived exclusively from the results of a search warrant executed at his residence. Based on my investigation and review of the evidence, I determined that law enforcement had knowingly provided false statements in the affidavit in support of the search warrant in state court. I filed what is called a "*Franks*" motion to suppress the evidence based on the false statements of law enforcement. After an evidentiary hearing and multiple responsive pleadings, the district court granted my motion to suppress the evidence and declared that all evidence would be excluded at trial. The Honorable Russell G. Clark, in granting my motion, announced that it was the first time in his judicial career that he had ever granted a motion to suppress based on a *Franks* violation (false statements to obtain a search warrant). The suppression of the physical evidence induced the government to offer Mr. Wheeler a plea agreement to ten years of incarceration. Because there remained multiple witnesses who would testify against Mr. Wheeler, we accepted this offer. Rather than serve the rest of his life in prison, Mr. Wheeler served eight and one-half years (after good time off) and completely changed his life. Mr. Wheeler was a model prisoner and even went on trips from the prison to give talks in the community. He has been drug and crime free since his release in 2006.

- *United States v. John Doe, I*, U.S. Dist. Ct., W.D. Mo., 2003 – Motion to suppress granted, federal indictment dismissed

Opposing counsel: James K. Kelleher

Officers received 911 information that, "three black males in a green/white 70's Buick, had just pointed a gun at the caller" and that "the vehicle was last seen at 500 S. National." Mr. Doe, and his two passengers, two black men, were leaving the Hardees restaurant on south National Avenue and returning to their car, a black Buick LaSabre. Based solely on this information, Mr. Doe and his passengers were arrested at gunpoint. After the seizure, two firearms were found in the vehicle and Mr. Doe was arrested for being a felon in possession of a firearm. I filed a motion to suppress the evidence and after an evidentiary hearing, the magistrate

recommended that the motion be granted. After the government objected to the magistrate's recommendation, the Honorable Judge Whipple overruled the government's objections and granted the motion to suppress. The government did not appeal this decision and the case was dismissed. This was a hard fought case for a fundamental constitutional right, that being the right of all citizens to be free from illegal seizures.

- *United States v. John Doe, II*, U.S. Dist. Ct., W.D. Mo., 2006-2008 - Federal indictment dismissed

Opposing Counsel: Richard E. Monroe and Randall D. Eggert

In this case, both my clients, a corporation and its bookkeeper, were named in 50 counts of a lengthy complex indictment alleging they made false statements to obtain payments on federal construction contracts at Fort Leonard Wood. The government did not timely prosecute this case under the federal Speedy Trial Act. I filed a motion to dismiss the case based on a violation of the Speedy Trial Act. The federal magistrate recommended that my motion be denied. I filed a motion for reconsideration from the magistrate's decision and also filed objections appealing that decision to the district court (the Honorable Gary A. Fenner). The magistrate ordered the government to respond to my motion for reconsideration and objections. Finally, one month later, based on my motion and with a stipulation by the government, Judge Fenner dismissed the indictment in its entirety. I investigated and worked this case extremely hard and ultimately prevailed. Even though the dismissal was without prejudice (meaning the case could be refiled), the government never refiled the case. It is now a closed record under Missouri law.

- *United States v. John Doe, III*, U.S. Dist. Ct., W.D. Mo., 2008-2009 – Federal indictment avoided

Opposing counsel: Michael S. Oliver

In this case, my client was being investigated by Homeland Security and the Department of Labor for alleged violations of immigration and employment law. I investigated and prepared this case vigorously for two years in the pre-indictment phase, to the point where the main indictment against my client was never filed and a related indictment against another was dismissed. This is a case I am extremely proud of and that no one knows about because my client was never arrested nor charged.

- *City of Bolivar v. Marilyn A. Gehrlein*, 10PO-CR00610 Polk County, Associate Court, 2010. Motion for Judgment of Acquittal Notwithstanding the Verdict granted, ordinance declared unconstitutional

Opposing counsel: Reggie L. Breshears

Marilynn Gehrlein was charged with multiple violations of harassment under the Bolivar Municipal Code. These charges arose from emails she had sent to the Bolivar City Administrator complaining of his handling of various matters involving the animal shelter in Bolivar. Ms. Gehrlein attempted to represent herself on this case and proceeded to trial. At trial, she was convicted and the jury sentenced her to 30 days in jail. It was at that time that she hired me to represent her. Upon reviewing the case, it was immediately apparent to me that the City ordinance had serious constitutional problems. This was so even though the ordinance was a verbatim copy of the Missouri statute criminalizing harassment. I filed a Motion for Judgment of Acquittal or, in the Alternative, Motion for New Trial arguing that the section of the ordinance used in this case was unconstitutional on its face and as applied to Ms. Gehrlein in violation of her First Amendment right to free speech. Judge Michael Hendrickson agreed with my legal arguments, declared the ordinance unconstitutional and ordered Ms. Gehrlein's acquittal. The prosecutor did not appeal this decision. However, this exact same issue arose one year later in *State v. Vaughn*, 366 S.W.3d 513 (Mo. banc 2012) and the Missouri Supreme Court declared this same section of the verbatim State statute unconstitutional. We did not receive the credit for the successful appellate constitutional challenge to the statute, but we were first to prevail on this constitutional challenge. Although Ms. Gehrlein was acquitted and this is a closed record, this information is all readily available through press reporting and on the internet and her name may be disclosed.

- *State v. John Doe*, Webster County Circuit Court, 2011. Client acquitted after jury trial

Opposing counsel: Michael Huddleston

My client was acquitted of statutory rape charges after a felony jury trial. This is one of the two cases I tried to a jury that year in a two-week period and obtained acquittals on both. This is now a closed record under Missouri law.

- *State v. John Doe*, Greene County Circuit Court, 2011. Client acquitted after jury trial

Opposing Counsel: Ami Miller and Jonathan Barker (at trial); Casey Clark (pretrial)

My client was acquitted of multiple statutory rape and sex offense charges after a four-day felony jury trial. This acquittal was achieved even though the prosecutor had an audio recorded "confession" from my client. We successfully challenged the prosecutor's interpretation of my client's statements as not being a confession. Additionally, it should be noted that my client was a Hispanic male who did not speak English. This created a much more difficult environment for the trial as the entire trial had to be interpreted for my client. This is the second jury trial I tried that year in a two-week period in which I obtained acquittals. This is now a closed record under Missouri law.

- *State v. Batchman*, Greene County Circuit Court, 1131-CR00896 (trial in 2013). Client acquitted after bench trial

Opposing counsel: J. Ronald Carrier and Joshua D. Harrel

Robert Batchman was one of five defendants charged in what is commonly known as the “Greenleaf” prosecutions. This case was prosecuted by the Missouri Attorney General’s Office. This was a complex white collar prosecution alleging Mr. Batchman violated Missouri’s Unfair Merchandizing Practices Act. The defense of this case required a thorough understanding of real estate and contract law. In this instance, due in large part to the extensive pre-trial publicity, we waived jury trial and tried this case before the Honorable Thomas Mountjoy. After a five-day bench trial, Judge Mountjoy took the matter under advisement and ultimately acquitted Mr. Batchman of all charges. Mr. Batchman was the only defendant in the Greenleaf prosecutions who was acquitted, and the only defendant to not receive a felony conviction. Although this acquittal is a closed record, this summary does not provide any additional information not already disclosed to the public.

- *State v. John Doe*, Taney County Circuit Court, 2014. Client acquitted after jury trial

Opposing Counsel: Tony Brown

My client was acquitted of a felony sex offense after a four-day jury trial to a very conservative elderly jury. This acquittal was achieved even though the prosecutor had video recorded evidence of my client that he believed would seal his case. This is now a closed record under Missouri law.

- *State v. John Doe, II*, Greene County Circuit Court, 2014. Client acquitted after bench trial

Opposing Counsel: Stephanie Wan and Nathan Taylor

I was co-counsel on this case. Our client was charged in a seven-count indictment alleging serious felony sex offenses. Our client was acquitted after a four-day bench trial. This was a complex case that was filed by an indictment in Greene County. Based on pretrial filings, the most egregious of the serious felony sex offenses was dismissed by the court for failure to state an offense. Due to the pretrial publicity and the nature of the remaining charges, we elected to proceed with a bench trial. We jointly shared the trial defense and I presented the closing argument. At the conclusion of all closing arguments, without taking the case under advisement, the court acquitted our client of all remaining charges from the bench.

- (c) **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in other judicial capacity, please describe the nature and extent of your judicial responsibilities, including the dates you have served as a judge at each

level, the types of dockets you have handled, and any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

Not applicable.

11. (a) Describe any additional legal experience that you believe may be relevant to the commission's decision, including clients by category that you have represented.

In 2008, I represented a man charged with indecent exposure involving a child. The case drew extensive negative publicity in the newspaper, on television and on the radio. After the preliminary hearing, the Honorable Jason Brown dismissed the case finding that the State had not met its burden of proof. After Judge Brown's dismissal order, the prosecutor made derogatory statements on a local radio show about Judge Brown and his ruling. In light of the demeaning nature of the prosecutor's public statements against an esteemed member of the judiciary, I filed a bar complaint for the first time in my legal career. I was outraged that a prosecutor would make such derogatory public statements about a judge in clear violation of the rules of ethical behavior for lawyers. After considering the complaint and the prosecutor's response, the prosecutor was found in violation of Rule 4-8.2 based on his public derogatory statements about Judge Brown. Of interest, is that after the prosecutor's office refiled the same case, it was ultimately disposed of with a guilty plea to a simple misdemeanor charge of indecent exposure (what one would receive for urinating in public).

- (b) Describe any non-legal experience that you believe may be relevant to the commission's decision.
12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.
- **The Missouri Bar: 1993 to the present**
 - **National Association of Federal Defenders: 1997 to 2006**
Newsletter Editor: 1999 to 2001
Secretary: 1999
President-Elect: 2000
President: 2001 to 2003 (office increased to a two-year presidency)
Board of Directors: 1999 to 2006
 - **Springfield Metropolitan Bar Association: 1999 to the present**

Criminal Law Committee Chairperson: 2012 to 2014
Criminal Law Committee Member: 1999 to the present
Federal Bench and Bar Committee Member: 2005 to 2007
 - **National Association of Criminal Defense Lawyers Member: 2000 to 2014**

13. (a) List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.
- **National Association of Federal Defenders, *The Liberty Legend*, Newsletter Editor: 1999 to 2001**
 - **National Association of Federal Defenders, President's Award: 1999**
 - **National Association of Federal Defenders, Appreciation Award: 2003 (after two-year presidency)**
 - ***The Confrontation Clause after Crawford v. Washington and its Progeny*, Springfield Metropolitan Bar Association Bar News: 2007**
 - **Missouri & Kansas Super Lawyers: 2015**
- (b) List any other articles, reports, letters to the editor, editorial pieces, or other material authored by you that have been published within the last five (5) years.
14. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations in which you have significantly participated. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Isabel's House:

Isabel's House Board of Directors. I was approached in 2012 to be on the Isabel's House Board of Directors. I was extremely honored to accept this request. Isabel's House is the only Crisis Nursery in Springfield and provides an enormous benefit and service to the Springfield community. Being on the Board of Directors is one of the most meaningful activities in which I have ever been involved. The Board is extremely active, involved and committed to the success of Isabel's House.

Isabel's House Executive Committee, Secretary: 2014-2016. Last year, I was asked to serve on the Executive Committee in the position as Secretary and I gladly accepted this position. During my time on the Executive Committee, Isabel's House has undergone substantial changes that have necessitated significant meetings and work by the Executive Committee to meet these challenges. This work has been tremendously rewarding and I feel blessed to be a part of this amazing organization. I was recently asked to stay in the position of Secretary for the coming year and, again, I accepted this honor.

Give Ozarks: I worked as one of twelve team captains with Isabel's House to spearhead fundraising during the recent one-day event "Give Ozarks." We had a goal of raising \$10,000 for the day and our final fundraising for that event was \$29,619, almost three times our goal.

Springfield Sister Cities Association (SSCA): I have been a member since 2004. My husband and I have been extensively involved with SSCA's cultural exchange programs, frequently hosting guests in our home from our sister cities in Japan and Mexico, and attending SSCA programs and events to help promote its mission, "Peace through People."

15. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

No

16. Please list any client(s) or organization(s) for which you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s).

None

17. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

Not applicable

18. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being a trial judge.

I am able to perform the essential functions of being a trial judge without accommodation.

19. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

No

20. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

No

21. If you are or were a member of the judiciary of the State of Missouri, please state:

- (a) Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.

Not applicable

- (b) Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

Not applicable

22. Have you have ever been held in contempt of court? If yes, provide details.

No

23. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem, or defendant ad litem?

Yes.

If your answer is yes, state the style of the case, where it was filed, and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

Randy Fink v. Nancy Price et al., Greene Co. Circuit Court Case No. 31104CC5465 and *Randy Fink v. Nancy R. Price, et al.*, U.S. Dist. Ct., W.D. Mo. Case No. 06-3081-CV-S-RED-P (single case that was removed from state court to federal court).

While I was an Assistant Federal Public Defender, a former client, Randy Fink, filed a lawsuit against myself, Raymond Conrad, Jr., (the Federal Public Defender at the time) and David Mercer, another assistant federal defender. Mr. Fink was at the time an inmate at the U.S. Medical Center for Federal Prisoners. My involvement with Mr. Fink came about after the government had filed a petition to obtain a court order to provide Mr. Fink mental health treatment against his will. I represented Mr. Fink in that case. Following an evidentiary hearing, the district court ordered that Mr. Fink receive mental health treatment under 18 U.S.C. § 4245. Mr. Fink was unhappy with the court's ruling and unhappy with my representation on this issue. Mr. Fink subsequently filed the above-listed lawsuit. This case was originally filed in Greene County Circuit Court, but was removed to federal court. The essence of his lawsuit was that we had committed malpractice by: refusing to preserve his "right for self-representation;" failing to assert that the prosecutor "was not legally in office;" and conspiring to permit an "illegal prosecution under [18 U.S.C. § 4245]." (Order dismissing case, May 19, 2006, page 2). To my knowledge this is the only lawsuit ever filed against me based on my representation of defendants while at the Federal Defender's Office.

In preparing this Application, I searched Casenet out of an abundance of caution and found *Mark E. Womack Jr. v. State of Missouri*, Greene Co. Circuit Court Case No. 1331-CC01262. This is a lawsuit that was filed to challenge Mr. Womack's conviction in state court. I appear to be listed as a third-party defendant, but I have never been served in this case. I withdrew from Mr. Womack's criminal case at his arraignment before the Honorable Thomas Mountjoy. Mr. Womack's criminal case was handled from that point on by other counsel and I have no knowledge as to the basis of the above listed lawsuit.

24. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (Note that this question does not require that traffic offenses or other infractions be listed.)

No

If your answer is yes, state the style of the case, where it was filed, and explain in detail.

25. Are you delinquent in the payment of any federal, state, county or city taxes? If yes, provide details.

No

26. You must attach to this application one writing sample of your choice. The only rule, limitation or instruction is that you must indicate whether it was edited by anyone else, and if so, to what degree.

See attached writing samples (that were not edited by others):

- ***City of Bolivar v. Marilyn A. Gehrlein: Motion for Judgment of Acquittal Notwithstanding the Verdict or, in the Alternative, Motion for New Trial***
- ***United States v. Deon Love: Brief for Appellant***

27. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission's decision.
28. Please list the names of ***five*** persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (5) references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references** and to see that they send the requested letters in a timely manner and in accordance with the Guidelines for References.

See list on following page.

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